

Appl. No.: 09/804,580
Amdt. Dated: August 20, 2003
Reply to Office Action of May 21, 2003

REMARKS/ARGUMENTS

Claims 1-39 and 48-50 are pending for further examination and Claims 40-47 have previously been cancelled. The Applicants would like to thank the Examiner for the comments in the Office Action dated May 21, 2003. The Examiner's comments were helpful and are incorporated into the remarks below.

Double Patenting Rejection

The Examiner has rejected Claims 1-39 and 48-50 of the present application (the “‘580 Application”) under the judicially created doctrine of obviousness-type double patenting. In particular, the Examiner has rejected Claims 1-39 and 48-50 as being unpatentable over Claims 1-22 of copending Application No. 09/804,458 (the “‘458 Application”) in view of U.S. Pat. No. 6,376,233 (Wolf et al).

The Applicants note that the ‘458 Application and the ‘580 Application are copending applications and that the provisional double patenting rejection against the ‘580 Application is governed by the following provision of the Manual of Patent Examining Procedure:

The “provisional” double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that “provisional” double patenting rejection is the only rejection remaining in one of the applications. If the “provisional” double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the “provisional” double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent.

M.P.E.P. 804 (I)(B). Because the provisional double patenting rejection is the only rejection remaining in the ‘580 Application, the Applicants respectfully request the Examiner withdraw the rejection and allow the claims of the ‘580 Application to issue. The Applicants note that the ‘458 Application has not yet been the subject of a substantive Office Action, and therefore recognize that the Examiner may wish to submit any double patenting rejection deemed appropriate against the ‘458 Application at the present time, or after the claims of the ‘580 Application have issued.

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Conclusion

The Applicants have endeavored to address all of the Examiner's concerns as expressed in the outstanding Office Action. The Applicants respectfully submit that all pending claims are now in condition for allowance. Reconsideration and withdrawal of the outstanding rejection is respectfully requested.

If the Examiner has any questions which may be answered by telephone, he is invited to call the undersigned directly.

Respectfully submitted,
KNOBBE, MARTENS, OLSON & BEAR, L.L.P.

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